

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 30, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2013AP7
STATE OF WISCONSIN**

Cir. Ct. No. 2010SC2489

**IN COURT OF APPEALS
DISTRICT II**

JOHN A. SMALL,

PLAINTIFF-RESPONDENT,

V.

RYAN KRUPP,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Racine County:
GERALD P. PTACEK, Judge. *Reversed and cause remanded with directions.*

¶1 GUNDRUM, J.¹ Ryan Krupp appeals pro se from an order of the circuit court denying his motion to waive transcript costs related to his appeal of a

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

small claims judgment. As discussed below, we reverse and remand to the circuit court for a determination of whether Krupp is entitled to such a waiver under the two-part test established by the Wisconsin Supreme Court in *State ex rel. Girouard v. Circuit Court for Jackson Cnty.*, 155 Wis. 2d 148, 159, 454 N.W.2d 792 (1990).

Background

¶2 This appeal arises out of a small claims action John Small filed against Krupp for damages allegedly caused in relation to Krupp’s roofing work conducted pursuant to a contract between the parties. Following a trial, the circuit court awarded Small a judgment in the amount of \$5000, plus costs. Krupp filed a motion for reconsideration which the court denied.

¶3 Krupp appealed² and also filed with the circuit court a motion to waive transcript costs. Within the motion, Krupp states that he has filed a petition for waiver of fees/costs with this court, including required information,³ he has no income and has an approximately \$400 per month child support obligation, and he was recently represented by the state public defender’s office due to his indigency and his financial status has not changed since that determination was made. Krupp further details reasons why he believes his appeal is meritorious. Near the end of his motion, Krupp states: “If this Court requires additional documentation (ie forms filled out) please advise and provide Mr. Krupp with whatever forms

² The appeal of the monetary judgment has been stayed pending the resolution of this appeal. See December 28, 2012 entry in *Small v. Krupp*, case No. 12AP2401, available at <http://wscca.wicourts.gov>.

³ We note that upon his request, we forwarded to Krupp the forms necessary to complete a fee waiver petition for this appeal and have granted his motion for such waiver.

needed. Mr. Krupp reserves the right to supplement this motion with additional facts as needed.” The concluding line of the motion states: “I, Ryan Krupp, swear under oath that the facts presented above are truthful and correct.” Krupp’s dated signature thereafter is accompanied by a notarization.

¶4 The circuit court drafted a handwritten note stating: “Krupp has not filed indigency form. Even so, since this is a civil SC matter, request is denied.” A clerk, apparently relying on this note, sent Krupp a letter stating, in relevant part: “You have not filed an Affidavit of Indigency for the court’s review but Judge Ptacek is denying your request anyway due to the fact that this is a civil matter.” Krupp appeals. Additional facts are included as necessary.

Discussion

¶5 This appeal focuses solely on whether Krupp is entitled to a waiver of the cost for the transcript to use in pursuing his underlying appeal of the small claims judgment against him. This requires us to interpret WIS. STAT. § 814.29, which provides when court fees may be waived based upon a party’s indigency. On review, our interpretation of statutes and application of legal principles, including supreme court precedent, to undisputed facts is de novo. ***Wisconsin DOR v. Hogan***, 198 Wis. 2d 792, 802, 543 N.W.2d 825 (Ct. App. 1995). Krupp argues that ***Girouard*** controls and that the circuit court erred in failing to apply that decision to his motion. We agree with Krupp and reverse.

¶6 In ***Girouard***, a civil case, the supreme court interpreted the statutory scheme under WIS. STAT. § 814.29. ***Girouard***, 155 Wis. 2d at 150, 157. The court specifically addressed the question of whether a charge for a transcript is a fee and concluded that WIS. STAT. § 814.69(1) “clearly states, a court reporter’s charge for a transcript is such a fee.” ***Girouard***, 155 Wis. 2d at 157. The court

held that under § 814.29, a party “may prosecute an appeal without being required to pay any fee,” including for transcripts, if the appellant (1) is found to be indigent and (2) presents a claim upon which relief can be granted. *Girouard*, 155 Wis. 2d at 157, 159. The court emphasized, however, that “the claim [must be] arguably meritorious.” *Id.* at 159 (citation omitted; alteration in *Girouard*). Accordingly, a court must apply this two-part test in appeals from civil judgments.

¶7 Here, the circuit court appears to have denied Krupp’s motion on the basis that this is an appeal of a civil *small claims* matter. The court cited no legal authority supporting its conclusion that waiver of transcript fees is not available for small claims appeals. Pro se respondent Small also provides us with no law supporting the circuit court’s conclusion, nor have we been able to locate any law suggesting the clear holding of *Girouard* does not apply in civil small claims matters. Thus, we conclude the court erred in denying Krupp’s motion for a waiver of transcript costs based upon an apparent belief that such a waiver is not permitted on an appeal of a civil small claims matter.

¶8 Because we conclude that the supreme court’s decision in *Girouard* applies to this civil small claims appeal, we reverse the circuit court’s summary denial of Krupp’s motion and remand for the circuit court to determine, under the *Girouard* two-part test, whether Krupp is entitled to a waiver of transcript costs. If the court determines that Krupp is in fact indigent and has an arguably meritorious claim, then waiver of transcript costs is required. *See Girouard*, 155

Wis. 2d at 153, 157. If Krupp fails to meet either one of these requirements, the court shall deny his motion. *See id.* at 159.⁴

By the Court.—Order reversed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

⁴ In his response brief, Small indicates he did not receive a copy of Krupp’s brief-in-chief. Following our November 6, 2013 “Acknowledgement of Filing of Brief” sent to the parties, Small sent us a November 15, 2013 letter indicating he did not receive a copy of Krupp’s brief-in-chief. In a November 19, 2013 order, sent to both parties, we ordered Krupp to serve Small with Krupp’s brief and appendix “at the address used on this order” and “advise the clerk of this court in writing that he has done so and state the address to which he sent these materials.” In a “motion for reconsideration” dated December 1, 2013, Krupp provided written indication that he mailed the required documents to Small at the correct address. In a December 11, 2013 order, sent to both parties, we again identified that our November 19, 2013 order required Krupp to serve Small with Krupp’s brief and appendix and “ORDERED that Ryan Krupp has complied with the November 19, 2013 order” requiring such service. On January 17, 2014, we sent an order to both parties indicating that Small’s response brief was delinquent and ordering that Small serve and file his brief within five days, or request an extension, or the order appealed from might be summarily reversed. On January 28, 2014, we notified the parties that Small’s response brief had been filed.

Between our November 19, 2013 order directing Krupp to serve Small with Krupp’s brief-in-chief and the filing of Small’s response brief, Small never indicated to this court that he had not received Krupp’s brief-in-chief, despite our December 11, 2013 order sent to both parties stating that Krupp had *complied* with our November 19, 2013 order requiring such service upon Small. If Small in fact had not received Krupp’s brief, he had an obligation to inform this court prior to the delinquent filing of his brief. In light of this history, we accept Small’s brief as filed.

